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SERVICE DATE – JULY 5, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 606X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN ALLEGHENY COUNTY, PA

Decided: July 1, 2005

By decision and notice of interim trail use or abandonment (NITU) served on June 14, 2002 (June 2002 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CSX Transportation, Inc. (CSXT) of a 2.1-mile line of railroad in its Northeast Region, Baltimore Division, P&W Subdivision, extending between milepost BFH 0.0 and milepost BFH 2.1, in Pittsburgh, Allegheny County, PA, subject to trail use, historic preservation and standard employee protective conditions. The June 2002 decision authorized the City of Pittsburgh, PA (Pittsburgh), to negotiate with CSXT for interim trail use/rail banking for the 1.6-mile portion of the right-of-way (ROW) between milepost BFH 0.5 and milepost BFH 2.1. Subsequently, by decision served July 12, 2002, the NITU was modified to provide a similar period for the Borough of Millvale (Millvale) to negotiate an interim trail use/rail banking agreement over the remaining 0.5-mile portion of the rail line between milepost BFH 0.0 and milepost BFH 0.5. The NITU negotiating periods were due to expire on December 11, 2002, for Pittsburgh, and on January 8, 2003, for Millvale. Both negotiating periods were extended through July 8, 2003, by decision served on December 9, 2002. The June 2002 decision also stated that, if consummation has not been effected by the filing of a notice of consummation by June 14, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. By decisions served on August 26, 2003, January 8, 2004, July 14, 2004, and December 23, 2004, the due date for filing a notice of consummation was extended until June 30, 2005.

In a letter dated June 29, 2005, CSXT requests an extension of the negotiating period for both Pittsburgh and Millvale until December 28, 2005, and an extension of the consummation notice filing deadline until February 26, 2006. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with Pittsburgh and Millvale, and desires to continue to negotiate for interim trail use/rail banking with Pittsburgh and Millvale.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1966); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997).

An extension of the consummation deadline also is justified. Accordingly, the NITU negotiating period will be extended until December 28, 2005, and the consummation notice filing deadline will be extended until February 26, 2006.

As noted in the December 23, 2004 decision, the Board's regulations at 49 CFR 1152.29(e)(2) require the filing of a notice of consummation within 1 year from the service date of the decision authorizing an abandonment, but only if there are no legal or regulatory barriers to consummation at that time. The historic preservation condition imposed by the Board in this proceeding has not yet been satisfied. Pursuant to 49 CFR 1152.29(e)(2), CSXT has until 60 days following the removal of the condition in which to file a notice of consummation of the abandonment. To provide certainty to CSXT, however, the Board will provide that the notice of consummation need not be filed until February 26, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request to extend the NITU negotiating period and the consummation notice filing deadline is granted.
2. The NITU negotiating period is extended to December 28, 2005, and the consummation notice filing deadline is extended to February 26, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary